Abdul Razak Ahmad v Kerajaan Negeri Johor & Anor

HIGH COURT (JOHOR BAHRU) — ORIGINATING SUMMONS NO 24–121–94
HAIDAR J
28 APRIL 1994

Statutory Interpretation *— Aids to construction — Other Acts — Meaning of 'sovereign authority' in s 74 of the Evidence Act 1950 — Whether definition of 'sovereign' in art 1 of the Constitution of the State of Johor could be resorted to — Evidence Act 1950 s 74 — Constitution of the State of Johor art 1*

Constitutional Law *— Public services — Public document — Whether contract entered into by state government was a public document within s 74(a)(i) of the Evidence Act 1950 — Whether plaintiff had right to search and examine document — Evidence Act 1950 s 74*

Civil Procedure *— Locus standi — Judicial review — Whether plaintiff had locus standi to bring application for judicial review of state authority's acts — Town and Country Planning Act 1976 — Rules of the High Court 1980 O 18 r 19*

Civil Procedure *— Locus standi — Judicial review — Decision of state government contravened Town and Country Planning Act 1976 — Whether illegality of decision gave plaintiff locus standi to apply for judicial review — Town and Country Planning Act 1976*

Civil Procedure *— Locus standi — Judicial review — Decision of state government contravened Town and Country Planning Act 1976 — Whether plaintiff was aggrieved party by virtue of being a ratepayer — Town and Country Planning Act 1976*

Civil Procedure *— Originating summons — Declaration for judicial review of state government's decision — Whether leave of court necessary*

The first defendant, the Johor State Government, entered into an agreement ('the agreement') with the second defendant, Johor Coastal Development Sdn Bhd ('JCD'), to develop a project in the Straits of Tebrau known as the 'floating city'. The plaintiff filed an originating summons for, inter alia, declarations that: (i) he had the right to search and examine the agreement as it was a public document within the meaning of s 74 of the Evidence Act 1950; and (ii) the project was illegal as it contravened the Town and Country Planning Act 1976 ('the Act'). The plaintiff's application was brought on the grounds that he could be personally affected by the environmental problems that may be created by the project and in a representative capacity as the chairman of the Jawatankuasa Bertindak Pencinta Alam Selat Tebrau, a non-registered body. The defendants applied to strike out the summons under O 18 r 19(1)(a) of the Rules of the High Court 1980.

Held, dismissing the plaintiff's application:

(1) The words 'sovereign authority' in s 74 are not defined in the Evidence Act 1950. However, 'Sovereign' is defined in art 1 of the First Part of the Constitution of the State of Johor to mean the Sultan and Sovereign Ruler of the State and Territory of Johor and its dependencies, and not the Johor State Authority as argued by the plaintiff. Therefore, the plaintiff's contention that the agreement was a public document within the meaning of s 74(a)(i) of the Evidence Act 1950 read with art XIII(1) of the Second Part of the Constitution of the State of Johor could not be upheld.

(2) Even assuming that 'the sovereign authority' in s 74(a)(i) means the state authority, the phrase 'documents forming the acts or records of the acts of the sovereign authority' does not include documents like the agreement. According to the learned author of *Sarkar on Evidence* (12th Ed), a deed of sale (similarly the agreement) is not a public document. Therefore, the agreement could not possibly come within the meaning of 'public document' so as to entitle the plaintiff to make a search and examine the agreement entered into between the defendants.

(3) In any event, the plaintiff had no locus standi to bring the application as there was no legal duty imposed on the first defendant to consult taxpayers like the plaintiff in respect of contracts made by the first defendant and the plaintiff had no legal relationship with JCD to indicate the existence of any legal right or duty between them.

(4) Even if there had been a contravention of the Act because the area of the project was reserved for recreational facilities, the plaintiff had no locus standi to seek a declaration from the court that the project was illegal unless he could show that he had or would suffer damage peculiar to him by reason of such contravention or that he had been adversely affected over and above that of the ordinary taxpayer, ratepayer or resident of Johor Bahru.

(5) The plaintiff's contention that he was an aggrieved person by virtue of being a ratepayer, could not be upheld because the words 'sufficient interest' in para 68 of 46 *Halsbury's Laws of England* (4th Ed) relied on by the plaintiff, referred to the new English O 53 which had no application in this country.

(6) In any event, leave is required to bring an application for judicial review of a decision made under the Act and the local planning authority in respect of the project is the City Council of Johor Bahru which is not a party to the proceedings.

[Bahasa Malaysia summary

Defendan pertama, Kerajaan Negeri Johor, telah mengikat suatu persetujuan ('persetujuan itu') dengan defendan kedua, Johor Coastal Development Sdn Bhd ('JCD'), untuk memajukan suatu projek di Selat Tebrau yang dikenali sebagai 'kota terapung'. Plaintif telah

memfailkan suatu saman pemula untuk, antara lain, deklarasi bahawa: (i) beliau mempunyai hak membuat carian dan memeriksa persetujuan itu kerana ianya merupakan suatu dokumen awam mengikut maksud s 74 Akta Keterangan 1950; dan (ii) projek itu tidak sah kerana ianya bercanggah dengan Akta Perancangan Bandar dan Desa 1976 ('Akta itu'). Permohonan plaintif telah dibawa atas alasan bahawa beliau mungkin terjejas secara peribadi oleh masalah alam sekitar yang mungkin diwujudkan oleh projek itu dan di dalam keupayaan perwakilannya sebagai Pegerusi Jawatankuasa Bertindak Pencinta Alam Selat Tebrau, suatu badan yang tidak berdaftar. Defendan telah memohon untuk membatalkan saman itu di bawah A 18 k 19(1)(a) Kaedah-Kaedah Mahkamah Tinggi 1980.

Diputuskan, menolak permohonan plaintif:

(1) Perkataan 'sovereign authority' di dalam s 74 tidak ditafsirkan di dalam Akta Keterangan 1950. Bagaimanapun, 'Sovereign' ditafsirkan di dalam perkara 1 Bahagian Pertama Perlembagaan Negeri Johor untuk bermakna 'Sultan and Sovereign Ruler of the State and Territory of Johore and its dependencies', dan bukannya Pihak Berkuasa Negeri Johor seperti yang dihujahkan oleh plaintif. Oleh itu, penegasan plaintif bahawa persetujuan itu merupakan suatu dokumen awam mengikut maksud s 74(a)(i) Akta Keterangan 1950 dibaca dengan perkara XIII(1) Bahagian Kedua Perlembagaan Negeri Johor tidak boleh dipertahankan.

(2) Sekalipun dianggap bahawa perkataan 'the sovereign authority' di dalam s 74(a)(i) bermakna pihak berkuasa negeri, ungkapan 'documents forming the acts or records of the acts of the sovereign authority' tidak termasuk dokumen seperti persetujuan itu. Mengikut penulis arif *Sarkar on Evidence* (Edisi ke-12), suatu suratikatan jualan (begitu juga persetujuan itu) tidak merupakan suatu dokumen awam. Oleh itu, persetujuan itu tidak mungkin termasuk dalam maksud 'dokumen awam' untuk memberikan plaintif hak untuk membuat carian dan memeriksa persetujuan yang diikat di antara defendan-defendan.

(3) Walau bagaimanapun, plaintif tidak ada locus standi untuk membawa permohonan ini kerana tidak terdapat kewajipan undang-undang pada pihak defendan pertama untuk merujuk kepada pembayar cukai seperti plaintif berkenaan dengan kontrak yang diikat oleh defendan pertama dan plaintif tidak mempunyai perhubungan di sisi undang-undang dengan JCD untuk menunjukkan kewujudan sebarang hak atau kewajipan undang-undang di antara mereka.

(4) Sekalipun terdapat suatu pelanggaran Akta itu kerana kawasan projek itu disimpan untuk kemudahan rekreasi, plaintif tidak mempunyai locus standi untuk memohon suatu deklarasi daripada mahkamah bahawa projek itu tidak sah kecuali jika beliau boleh menunjukkan bahawa beliau telah atau akan mengalami kerugian khusus terhadapnya disebabkan pelanggaran tersebut atau bahawa

beliau telah dijejaskan lebih daripada pembayar cukai, pembayar cukai pintu atau penghuni biasa di Johor Bahru.

(5) Penegasan plaintif bahawa beliau merupakan seorang terkilan oleh kerana beliau merupakan seorang pembayar cukai pintu tidak boleh dipertahankan kerana perkataan 'sufficient interest' di dalam perenggan 68 di 46 *Halsbury's Laws of England* (Edisi ke-4) yang plaintif bergantung kepada, merujuk kepada O 53 di England yang baru yang tidak terpakai di negara ini.

(6) Walau bagaimanapun, kebenaran diperlukan untuk membawa permohonan untuk kajian semula kehakiman suatu keputusan yang dibuat di bawah Akta itu dan pihak berkuasa perancangan tempatan yang berkenaan dengan projek itu adalah Majlis Perbandaran Johor Bahru yang tidak merupakan suatu pihak kepada prosiding ini.]

Notes

For cases on locus standi, see 2 *Mallal's Digest* (4th Ed) paras 1508–1510; [1989] Mallal's Digest 444–447; and [1990] Mallal's Digest 341–343.

Cases referred to

1 *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 (folld)
2 *Lim Cho Hock v Government of the State of Perak & Ors* [1980] 2 MLJ 148 (distd)
3 *Tan Sri Hj Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177(distd)
4 *District Council Central, Province Wellesley v Yegappan* [1966] 2 MLJ 117 (refd)
5 *Tengku Jaffar bin Tengku Ahmad v Karpal Singh* [1993] 3 MLJ 156 (folld)

Legislation referred to

Constitution of the State of Johor art XIII
Evidence Act 1950 s 74
Rules of the High Court 1980 O 15 r 16

Abdul Razak Ahmad (*Abdul Razak Ahmad & Associates*) in person.
Abdul Alim Abdullah (Johor State Legal Adviser) for the first defendant.
Chin Yew Meng (*Roger Tan* with him) (*Allen & Gledhill*) for the second defendant.

Cur Adv Vult

Haidar J: The plaintiff, Encik A Razak Ahmad, an advocate and solicitor, filed the originating summons seeking for, inter alia, the following orders:

(1) satu deklarasi bahawa plaintif berhak membuat carian dan memeriksa dokumen perjanjian yang telah dimeteraikan di antara Kerajaan Negeri

A Johor dan Johor Coastal Development Sdn Bhd dalam bulan April 1993 mengenai projek pembinaan Kota Terapung di Selat Tebrau; and

(2) satu deklarasi bahawa projek pembinaan Kota Terapung di Selat Tebrau adalah tidak sah kerana ianya bercanggah dengan Akta Perancangan Bandar dan Desa 1976.

B It is supported by the affidavit of Encik A Razak Ahmad himself (encl 3). Kerajaan Negeri Johor was named as the defendant.

On 28 February 1994, Johor Coastal Development Sdn Bhd ('JCD') filed a summons-in-chambers to intervene and be made a second defendant and for consequential orders thereof (encl 7). It is supported by the affidavit of Ron Pratt, the executive director of the proposed intervenor (encl 6), C Encik A Alim, the state legal adviser, acting for the defendant, supported the application. Encik A Razak Ahmad orally resisted the application. After hearing counsel, I made an order in terms of the summons-in-chambers and ordered that JCD be made a second defendant.

Subsequently, both the first and the second defendants, respectively, D filed summonses-in-chambers under O 18 r 19(1)(a) of the Rules of the High Court 1980 ('the RHC') (encls 14 and 16). As O 18 r 19(2) of the RHC provides that no evidence shall be admissible on an application under r 19(1)(a), no affidavits were filed in support thereof.

In the meantime, the plaintiff filed a notice of intention to cross-examine the deponents on their affidavits made on behalf of the first defendant, E opposing the originating summons (encl 17).

Enclosures 14 and 16 were heard first as if the defendants succeed in their applications, the plaintiff's application (encl 17) would no longer be necessary for hearing. It is not disputed that the first defendant approved a project, which I would say, is a gigantic one known as the 'floating city' F ('the project') to be undertaken by the second defendant in the first defendant's privatization programme. To that extent an agreement was executed between the first defendant and the second defendant. Because of the nature of the project, it quite naturally attracted a lot of publicity and at the same time generated the interest of the public.

The outstanding case in respect of the issue of no reasonable cause of G action/locus standi under O 18 r 19(1)(a) of the RHC is the Supreme Court case of *Government of Malaysia v Lim Kit Siang*.[1]

In the majority judgment of the Supreme Court in *Lim Kit Siang*'s case,[1] Salleh Abas LP (as he then was) at p 19 considered the meaning of 'cause of action' thus:

H > What then is the meaning of 'a cause of action'? 'A cause of action' is a statement of facts alleging that a plaintiff's right, either at law or by statute, has, in some way or another, been adversely affected or prejudiced by the act of a defendant in an action. Lord Diplock in *Letang v Cooper* [1965] 1 QB 232 at p 242 defined 'a cause of action' to mean 'a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person'. In my view the I factual situation spoken of by Lord Diplock must consist of a statement alleging that, first, the respondent/plaintiff has a right either at law or by statute and that, secondly, such right has been affected or prejudicated by the appellant/defendant's act.

It is then necessary for me to examine the plaintiff's prayers in the originating summons and the affidavits in support thereof to see whether the factual situation exists.

Firstly, the status of the plaintiff in filing the originating summons would seem to me a bit confusing as the title indicates that he is suing as a private person whereas in para 1 of his affidavit (encl 3) he deposed that he was the Pengerusi Jawatankuasa Bertindak Pencinta Alam Selat Tebrau, which I was made to understand, is a non-registered body. He seemed to imply that he was acting for Jawatankuasa Bertindak Pencinta Alam Selat Tebrau. Be that as it may, I take it that the plaintiff was acting as a private person as the title of the originating summons would seem to show.

As a private person or citizen, to what extent have his interests, private and/or legal, been affected thereby entitling him to have a cause of action against the defendants and consequently to pray for declaratory orders as in the originating summons from the court?

It would appear to me that the plaintiff is essentially relying on two grounds, viz:

(1) as a citizen, taxpayer, ratepayer and resident of Johor Bahru, he would be exposed to the effects of the project; and
(2) the project was approved in contravention of the Town and Country Planning Act 1976 ('the Act').

Prayer 1

The plaintiff contended that the agreement is a public document within the meaning of s 74(a)(1) of the Evidence Act 1950 which reads:

> The following documents are public documents:
>
> (a) documents forming the acts or records of the acts of —
>
> (i) the sovereign authority; ...

According to the plaintiff, s 74(a)(i) will have to be read with art XIII(1) of the Constitution of the State of Johor (Second Part) which reads: 'The State has power to acquire, hold and dispose of property of any kind and to make contracts.'

There is no definition of sovereign authority in the Evidence Act 1950. However, in art 1 of the First Part of the Constitution of the State of Johor 'Sovereign' means the Sultan and Sovereign Ruler of the State and Territory of Johor and its dependencies. The submission of the plaintiff on this aspect may not then be applicable. Be that as it may, even assuming that 'the sovereign authority' in s 74(a)(i) of the Evidence Act 1950 is to mean the state authority when read with art XIII(1) of the Constitution of the State of Johor, what then is the meaning to be given to the phrase 'documents forming the acts or records of the acts of the sovereign authority'? *Sarkar on Evidence* (12th Ed) at p 690 stated thus:

> Documents forming the acts or records of the acts of the sovereign authority.
>
> Under this head comes Acts of Parliament, judgments and acts of courts, both of voluntary and contentious jurisdiction, proclamations, public books and the

A like. They are divided into 'judicial' and 'non-judicial', and also 'writings of record' and 'writings not of record'. Records are memorials of the legislature, and of the King's Courts of Justice and are authentic beyond all manner of contradiction.

Further, according to *Sarkar*, the kind of acts which s 74 has in view is B indicated by s 78 (similar to our s 78). In fact, a deed of sale (similarly the agreement in this matter) is not a public document (see p 695 of *Sarkar*). It would seem clear therefore that the agreement could not possibly come within the meaning of 'public document' so as to entitle the plaintiff to make a search and examine the agreement entered into between the first and the second defendants referred to in Prayer 1 of the originating summons. C

Article 68(1) of the Federal Constitution (similar to art XIII(1) of the Constitution of the State of Johor) pertaining to the power to make contracts was considered by the Supreme Court in *Lim Kit Siang*'s case[1] at p 25:

> Under art 68(1) of the Constitution, the Government can make contracts and D can sue and be sued. In the making of a contract, s 2 of the Government Contracts Act 1949 ensures that if the contract is reduced to writing it should be made in the name of the Government and signed by a Minister or a public officer authorized by a Minister. There is nothing in the Constitution or in the Government Contracts Act which imposes a legal duty on the Government to consult and accept the views of any taxpayer or group of taxpayers or to hear objections. There may be a moral and political obligation on the part of the E Government to be mindful of taxpayers' objection, but this is not a basis for the court to find a legal duty giving any taxpayer locus standi to maintain this suit. Such moral obligation should be addressed at other forums.

The Government Contracts Act 1949 is applicable to the Government of the State. If there is no legal duty imposed on the first defendant to consult F taxpayers like the plaintiff in respect of contracts made by the first defendant, I do not see how the plaintiff can come to the court to seek a declaration that he has the legal right to examine the agreement referred to therein. Just like in *Lim Kit Siang*'s case,[1] the plaintiff has no legal relationship with JCD, the second defendant, which would indicate the existence of any legal right G or duty in the relation between them. He is a complete stranger to JCD. The plaintiff has not shown that he is a shareholder or has any interest, directly or indirectly, in the running of the affairs of JCD nor has JCD done any wrong to him or deprived or threatened to deprive him of his right and privilege. The cases of *Lim Cho Hock v Government of the State of Perak & Ors*[2] and *Tan Sri Hj Othman Saat v Mohamed bin Ismail*,[3] relied on by the H plaintiff are not applicable to the plaintiff's case as these cases can be justified on the basis that the plaintiff there had a genuine private interest to be furthered and protected.

In the circumstances, the court, in my view, is not the proper forum for the plaintiff to address his grievances. As I rule that the agreement is not a I public document and in any event he has no personal and/or legal interest in it, it seems clear to me that the plaintiff has no cause of action to seek Prayer 1 from the court. In fact he has clearly no locus standi to institute the originating summons in respect of Prayer 1.

Prayer 2

The basis of the plaintiff's prayer under this heading is that the project contravenes the Act. What then is the locus standi of the plaintiff to seek a declaration that the project is illegal on the basis that it contravenes the Act? In this respect, Hashim Yeop A Sani SCJ (as he then was) said at p 40 in *Lim Kit Siang*'s case[1] thus:

> What then is the proper law to apply to determine the locus standi of the respondent here? In my opinion, the principle in *Boyce v Paddington Borough Council* [1903] 1 Ch 109 as approved in *Gouriet* is still the law applicable in this country. Buckley J propounded the law as follows:
>
> > 'A plaintiff can sue without joining the Attorney General in two cases: first, where the interference with the public right is such as that some private right of his is at the same time interfered with...; and secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right.'
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> In my view, we ought also to apply the common law principle enunciated in *Boyce* by virtue of s 3 of the Civil Law Act 1956.
>
> In Australia, the same strict test was applied by the High Court when dealing with the question of locus standi as illustrated in *Australian Conservation Foundation v Commonwealth of Australia* (1979–80) 28 ALR 257. The main purpose of the suit there was to challenge a decision to approve the establishment of a resort and tourist area. The Foundation was a body involved with issues affecting environment.
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> The High Court [being the highest court in Australia] denied standing to the Foundation. The High Court held it to be clear that 'an ordinary member of the public who has no interest other than that which any member of the public has in upholding the law has no standing to sue to prevent the violation of a public right or to enforce the performance of a public duty'. Gibbs J also said:
>
> > 'A belief however strongly felt that the law generally or a particular law should be observed or that conduct of a particular kind should be prevented does not suffice to give its possessor locus standi.'
>
> In this country the principle was in fact correctly stated by the Federal Court in *Tan Sri Hj Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177 that 'the sensible approach' in a matter of locus standi in injunctions and declarations would be to regard it as a matter of jurisdiction, where there is an assertion of an infringement of a contractual or proprietary right, the commission of a tort, a statutory right or a breach of a statute which affects the plaintiff's interest substantially or where the plaintiff has a genuine interest in having his legal position declared. Indeed, the principle enunciated there is consistent with the principle enunciated by Buckley J in *Boyce*. However, in my view the courts in this country are not authorized by law to go beyond this principle.

Though it would seem to appear that the project is in breach of the structure plan as the area of the project is reserved for recreational facilities (see para 11.2.4 to the exhibit in encl 8A) that, by itself, in my view, as stated by Gibbs J and quoted with approval by Hashim Yeop Sani SCJ (as he then was) in *Lim Kit Siang*'s case[1] 'does not suffice to give the possessor the locus standi'.

A Even as a ratepayer and even if there has been a contravention of the Act, the plaintiff has no locus standi unless he can show that he has a legal right or interest belonging to him would have been affected by the project (see *District Council Central, Province Wellesley v Yegappan*[4]). What the plaintiff tried to impress is that he may be affected personally due to environmental B problem that may be created by the project. In my view, this is not enough and in this respect Hashim Yeop A Sani SCJ (as he then was) said in *Lim Kit Siang*'s case[1] at p 41:

> Thus in my view according to the law applicable in this country, Mr Lim Kit Siang has no qualifications in law to bring the suit in court. *He has not shown that he is more particularly affected than other people. He has not shown that he has any* C *recognizable legal right which has been infringed. He has not suffered any damage peculiar to himself by reason of the alleged breach of Emergency Ordinance No 22.*
>
> In short, it has not been shown that the rights or interests of Mr Lim Kit Siang have been adversely affected over and above that of 'the ordinary taxpayer, motorist and frequent user of highways' as he described himself. (Emphasis added.)

D

It would seem that the plaintiff at the same time tried to impress that the action was taken in a representative capacity by claiming that he is the Pengerusi Jawatankuasa Bertindak Pencinta Alam Selat Tebrau, a non-registered body. In that event it would appear that the rights to be asserted E would be public rights. In this respect, Hashim Yeop A Sani SCJ (as he then was) said in *Lim Kit Siang*'s case[1] at p 40:

> It is a fundamental principle that private rights can be asserted by private individuals, but public rights can only be asserted by the Attorney-General as representing the public. The courts have no jurisdiction in any circumstances to clothe a plaintiff with the right to represent the public interest.

F

Put shortly, merely showing that the project contravenes the Act without showing that he has or will suffer any damage peculiar to him by reason of such contravention or that he has been adversely affected over and above that of the ordinary taxpayer, ratepayer or resident of Johor Bahru would G not, in my view, give him the locus standi to seek a declaration from the court that the project is illegal.

However, the plaintiff contended that he had a genuine interest and if there is a contravention of the Act by the first defendant, as a ratepayer he is an aggrieved person. He relied on para 68 of 46 *Halsbury's Laws of England* (4th Ed) which reads:

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> Application for judicial review. Where there are no specific provisions in the Town and Country Planning Act 1971 for challenging the validity of an order or decision made under it, an application may be made for judicial review to obtain an order of mandamus, prohibition or certiorari, or an injunction or declaration as may be appropriate.
>
> I The applicant must apply ex parte to a judge for leave to make an application. Leave will be granted at the discretion of the court, *but will not be granted unless the court considers that the applicant has a sufficient interest to which the application relates.* A ratepayer living close to the site of a proposed development and incorporated bodies of local residents have been considered to have a sufficient

> interest to challenge the validity of a planning permission granted by the local planning authority. (Emphasis added.)

It would appear that leave is required in the first place and further the local planning authority in respect of the project would appear to be the City Council of Johor Bahru and it is not a party to these proceedings. Be that as it may, the key words are 'sufficient interest' which would be in line with the new English O 53 which came into force in England in January 1978. However, as was said by Salleh Abas LP (as he then was) in *Lim Kit Siang*'s case[1] at p 24:

> Back in Malaysia, since we have not accepted O 53 and its statutory underpinning (ie s 31 of the Supreme Court Act) there is no justification therefore for us to depart from the rule of locus standi accepted by the highest court in England prior to O 53.

Abdul Hamid CJ (Malaya) (as he then was) in *Lim Kit Siang*'s case[1] had this to say on O 53 at p 31:

> But in Malaysia, there is no provision in our Rules of the High Court equivalent to O 53 r 3(7) of the English Rules of the Supreme Court. Thus, in my view, there shall be a stringent requirement that the applicant, to acquire locus standi, has to establish infringement of a private right or the suffering of special damage: see *Gouriet v Union of Post Office Workers* and also *Boyce*'s case and this I consider to be the relevant test to apply when determining the question of standing.

Earlier, on the same page, the learned Chief Justice referring to the new English O 53 said:

> Moreover, it has been said that the formula 'sufficient interest' is not intended to create a class of persons popularly referred to as private 'attorney generals' who seeks to champion public interests in which he is not himself directly or personally concerned under the guise of applying for judicial review: see *Supreme Court Practice 1985* p 765 para 53/1–14/47.

As had been stated by Salleh Abas LP (as he then was) and of what had been said by Abdul Hamid CJ (Malaya) (as he then was) 'sufficient interest' is not applicable in this country and the plaintiff cannot therefore rely on the passage in *Halsbury's Laws of England* to support his contention that he has the standing.

In the circumstances I rule that the plaintiff has no locus standi to seek such declaration from the court.

Lastly, the plaintiff sought to rely on O 15 r 16 of the RHC to resist the application of the defendant. Order 15 r 16 reads:

> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed.

Order 15 r 16 of the RHC was considered by Idris Yusoff J in *Tengku Jaffar bin Tengku Ahmad v Karpal Singh*[5] where at p 165, the learned judge said:

> He claims that a declaration sought under O 15 r 16 is not open to objection. I am afraid I do not agree with him for it is an accepted rule of practice that a party

must have the necessary locus standi before it is allowed to appear and be heard in legal proceedings. Furthermore, the power to make a declaration is discretionary and there are decided cases which expound that to qualify for a declaration, the plaintiff must show not only that it is not inequitable for the court to grant it but also it is not contrary to the accepted principle upon which the court exercises its jurisdiction.

Hashim Yeop Sani SCJ (as he then was) in *Government of Malaysia v Lim Kit Siang* had occasion to say (at p 40), 'Order 15 r 16 of our Rules of the High Court 1980 cannot be made into a basis of jurisdiction for the court to entertain an action which is not properly before it'. This is in consonance with what was said by Viscount Dilhorne in *Gouriet v Union of Post Office Workers & Ors* [1977] 3 All ER 70 that O 15 r 16 'does not provide that an action will lie whenever a declaration is sought. It does not enlarge the jurisdiction of the court. It merely provides that no objection can be made on the ground only that a declaration is sought.'

In this case the objection is grounded on the locus standi of the plaintiff to seek the declarations and not merely seeking declarations as such.

In the circumstances the plaintiff failed to show that he has locus standi to seek the declaration as in prayer 2.

For the reasons set out by me I am of the opinion that the defendants succeeded in showing that the plaintiff has no reasonable cause of action as well as no locus standi to seek the declarations as in the originating summons. This is a proper case for the court to exercise its discretionary power under O 18 r 19(1)(a) of the RHC that the originating summons be struck out and I accordingly dismiss the originating summons with costs.

Application dismissed.

Reported by Anne Khoo